

SENATE BILL NO. 218

INTRODUCED BY TESTER, BUTCHER, COBB, LENHART, MUSGROVE, PARKER, WHEAT

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING LIABILITY FOR INJURY CAUSED BY THE INTRODUCTION OF GENETICALLY ENGINEERED WHEAT INTO MONTANA; PROVIDING CERTAIN LIABILITY EXEMPTIONS FOR FARMERS; PROVIDING DEFINITIONS; ~~ESTABLISHING VENUE FOR ACTIONS ASSOCIATED WITH GENETICALLY ENGINEERED WHEAT AND SEED CONTRACTS;~~ EXEMPTING ACTIONS ASSOCIATED WITH GENETICALLY ENGINEERED WHEAT FROM ALTERNATIVE DISPUTE RESOLUTION; AND AMENDING SECTION 80-5-501, MCA."

WHEREAS, the Legislature finds that Montana's wheat industry is a central and vital component of the state economy, that Montana's export markets have recognized Montana wheat to be among the finest in the world, and that Montana is the leading producer of organic wheat; and

WHEREAS, Montana has a unique national reputation for producing high quality crops, and the state's unique agricultural heritage is dependent on maintaining this reputation; and

WHEREAS, Montana's economy is also dependent on tourism that results from maintaining the unique reputation as a state with a pure and preserved natural environment; and

WHEREAS, Montana's health and environment are dependent on family farms that make up the backbone of a healthy rural economy; and

WHEREAS, supporting current and future family farmers is a part of Montana's heritage; and

WHEREAS, Montana supports the right of family farmers to farm without corporate domination; and

WHEREAS, Montana supports maximum diversity of seed supply as an environmental benefit, and consolidation of the seed supply into the hands of a few corporations takes away the possibility of this environmental benefit; and

WHEREAS, once planted, genetically engineered crops have been shown to be dispersed into the environment through means such as pollen drift, seed mixing, and the inadvertent transfer of seeds by humans, animals, and extreme weather events; and

WHEREAS, genetically engineered wheat cannot be successfully segregated from wheat that is not genetically engineered through current agronomic science, agricultural practices, or the agricultural infrastructure; and

1 WHEREAS, the introduction of genetically engineered wheat may cause significant harm to domestic
2 and foreign market acceptance and a loss of value of Montana agricultural crops for Montana farmers and the
3 grain handling and grain processing industries; and

4 WHEREAS, liability for the effects of genetically engineered crops has unfairly fallen as much on farmers
5 who do not plant genetically engineered crops as on farmers who do, and it can be expected that liabilities
6 associated with the growing of genetically engineered wheat in Montana will be passed by the ~~patent holder~~
7 MANUFACTURER OF GENETICALLY ENGINEERED WHEAT to the grower of the engineered variety and to farmers who
8 do not plant genetically engineered wheat; and

9 WHEREAS, the burden of ensuring that farmers are not harmed by genetically engineered wheat
10 technology should be placed on the manufacturer of the genetically engineered wheat.

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 NEW SECTION. Section 1. Short title. [Sections 1 through 4] may be cited as the "Farmer Limited
15 Liability for Genetically Engineered Wheat Act".

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17 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 4], the following definitions
18 apply:

19 (1) "Farmer" means a person responsible for planting, managing, or harvesting a crop.

20 (2) "Genetically engineered wheat" means wheat seed or a whole wheat plant or plant part modified by
21 methods including cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology,
22 such as gene deletion, gene doubling, introduction of a foreign gene, and changes in the position of genes when
23 achieved by recombinant DNA technology, but not including the use of traditional breeding, conjugation,
24 fermentation, hybridization, in vitro fertilization, or tissue culture. The term includes scions identified by the
25 national organic program of the U.S. department of agriculture that are intended for planting and that are
26 produced using a variety of methods to genetically modify organisms or influence their growth and development
27 by means that are not possible under natural conditions or processes.

28 (3) "Injury" includes but is not limited to:

29 (a) loss of any price premium that would have accrued to a farmer by contract or other marketing
30 arrangement that would have been otherwise reasonably available to the farmer or grain warehouse operator

1 through ordinary commercial channels;

2 (b) any additional transportation, storage, handling, or related charges or costs incurred by a farmer that
3 would not have been incurred in the absence of crop contamination;

4 (c) any judgment, charge, or penalty for which a farmer of a nongenetically engineered crop is liable
5 because of breach of contract, including loss of organic certification for failure to deliver a crop or shipment free
6 of genetically engineered material or for delivering a crop or shipment that exceeds any contractually agreed
7 tolerances for the presence of genetically engineered material;

8 (d) market price reductions incurred by farmers that result from the loss of wheat exports, including
9 foreign and domestic markets; and

10 (e) a farmer's loss of livelihood or reputation caused by genetically engineered wheat.

11 (4) "Manufacturer" means a person, corporation, or other entity that produces genetically engineered
12 wheat for commercial purposes.

13
14 **NEW SECTION. Section 3. Liability for damages resulting from genetically engineered wheat --**
15 **exemption -- defenses.** (1) A manufacturer is liable for injury suffered by any party because of the release of
16 genetically engineered wheat into Montana. A plaintiff who prevails in an action under this section may recover
17 compensable damages, reasonable attorney fees, and other litigation expenses as part of the costs of the action.
18 ~~Proper venue for an action under this section is the county where the injury is alleged to have occurred.~~

19 (2) Liability of a manufacturer under this section may not be waived or avoided by contract or other
20 means.

21 (3) A farmer who is not in breach of a contract for the purchase or use of genetically engineered wheat
22 and who unknowingly comes into possession or uses genetically engineered wheat as a result of natural
23 reproduction and cross-pollination, seed mix contamination, or other contamination is not liable under this
24 section for any injuries, claims, losses, or expenses, including attorney fees, caused by the use of the genetically
25 engineered wheat.

26 (4) A manufacturer is entitled to a liability defense under this section if:

27 (a) the farmer or a third party acted in gross negligence in causing contamination with genetically
28 engineered wheat;

29 (b) the farmer signed a contract with the manufacturer;

30 (c) the farmer received a training manual from the manufacturer; and

(d) the farmer would not have caused injury through the use of genetically engineered wheat if the farmer had followed the manufacturer's contract and training manual.

NEW SECTION. Section 4. Seed contracts governed by Montana law. A seed contract for the purchase of GENETICALLY ENGINEERED WHEAT seeds or plant parts in Montana is governed by Montana law. A provision in a seed contract that purports to waive the provisions of this section, to choose the laws of a jurisdiction other than Montana to govern the contract, or to choose a forum that would not otherwise have jurisdiction over the parties is void.

Section 5. Section 80-5-501, MCA, is amended to read:

"80-5-501. Requirement and effect of alternative dispute resolution -- ~~exemption~~ exemptions. (1)

As a prerequisite to a buyer's rights to maintain legal action against a dealer or any other seller of agricultural seed for a claim as provided in subsection (2), the buyer shall submit the claim to alternative dispute resolution as provided in 80-5-506 and this section.

(2) A buyer may claim to have been damaged by the failure of agricultural seed to produce or perform:

- (a) as represented by the label that is required to be attached pursuant to 80-5-123;
- (b) as represented by the bulk certificate if the agricultural seed was purchased in bulk;
- (c) by warranty; or
- (d) as a result of negligence.

(3) Any applicable period of limitations with respect to the claim must be tolled until 10 days after the filing of the report of alternative dispute resolution with the director of the department as provided in 80-5-506.

(4) (a) A claim may not be asserted as a counterclaim or defense in any action brought by a seller against a buyer until the buyer has submitted a claim to alternative dispute resolution as provided in 80-5-506 and this section.

(b) When the buyer files a written notice of intention to assert a claim as a counterclaim or defense in the action and the notice is accompanied by a copy of the buyer's complaint in alternative dispute resolution filed under 80-5-506, the action must be stayed and any applicable statute of limitations must be suspended with respect to the claim asserted as a counterclaim or defense until 10 days after the filing of the report of alternative dispute resolution with the director of the department as provided in 80-5-506.

(5) To be eligible for resolution under the alternative dispute resolution process, a complaint must allege

1 damages in excess of the amount established in 25-35-502 for jurisdiction in small claims court.

2 (6) This part does not apply to seed potatoes or to genetically engineered wheat, as defined in [section
3 2]."

4
5 **NEW SECTION. Section 6. Codification instruction.** ~~(4)~~ [Sections 1 through 3 4] are intended to be
6 codified as an integral part of Title 80, chapter 5, and the provisions of Title 80, chapter 5, except the provisions
7 of Title 80, chapter 5, part 5, apply to [sections 1 through 3 4].

8 ~~—— (2) [Section 4] is intended to be codified as an integral part of Title 80, chapter 5, part 1, and the~~
9 ~~provisions of Title 80, chapter 5, part 1, apply to [section 4].~~

10
11 **NEW SECTION. Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
13 the part remains in effect in all valid applications that are severable from the invalid applications.

14 - END -